

TRANSCRIPT OF PROCEEDINGS

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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In the Matter of:

DAVID L. TITUS

Seattle, Washington

EB Docket No ,07-13

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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the Matter of:

: EB Docket No.
: 07-13

DAVID L. TITUS

: FRN No. 0002074797

Amateur Radio Operator : File No.

and Licensee of : EB-06-IH-5048

Amateur Radio

Station KB7ILD

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Tuesday,
March 27, 2007

9:30 a.m.

BEFORE:

RICHARD L. SIPPEL

Chief Administrative Law Judge

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P-R-O-C-E-E-D-I-N-G-S

(9:29 A.M.)

JUDGE SIPPEL: Did you file notices of appearance?

MR. SCHONMAN: Did we file?

JUDGE SIPPEL: Yes.

MR. SCHONMAN: No, the HDO said we didn't have to.

JUDGE SIPPEL: I was just asking that more out of curiosity than out of any requirement. I've gotten into tussles with the Bureau sometimes.

MR. SCHONMAN: It doesn't say that we didn't have to **file** one, but the rules make us an automatic party in every case.

JUDGE SIPPEL: Well, I know, but I've had occasion where it's been a problem in terms of the equality of treatment of the parties, and it's not just for purposes of principle on the administrative - taking that next administrative step, but it's a - sometimes what happens is, I think in one case

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1 it happened, is that the party was late in
2 filing notice of appearance and didn't have
3 too much of an excuse for doing it. But there
4 was no notice of appearance that had been
5 filed by the Bureau, so I mean in terms of
6 taking drastic steps in a situation like that,
7 such as, you know, dismissing a party or doing
8 on a default basis, I felt I just couldn't do
9 it.

10 MR. SCHONMAN: Well nobody's
11 alleged -

12 JUDGE SIPPEL: No. But I think in
13 the future it would be a good idea as a matter
14 of practice to just file one. It doesn't
15 hurt, and it puts everybody on an even keel.
16 But I'm not going to - no, not this case. Mr.
17 Brown?

18 MR. BROWN: Yes.

19 JUDGE SIPPEL: Hold on just a
20 minute. We have a court reporter here. I'm
21 Judge Sippel.

22 MR. BROWN: All right.

1 JUDGE SIPPEL: Judge Richard L.
2 Sippel. And I'll be presiding at this
3 proceeding. And I'mgoing to ask counsel to
4 identify themselves on the record.

5 MR. SCHONMAN: On behalf of the
6 Chief Enforcement Bureau, Gary Schonman and
7 William Knowles-Kellett.

8 JUDGE SIPPEL: Okay. And on behalf
9 of Mr. Titus, who is on the phone.

10 MR. BROWN: Steven Brown of the law
11 offices of David S. Marshall.

12 JUDGE SIPPEL: Okay. That's it
13 then, right? Just you Mr. Brown?

14 MR. BROWN: That's correct.

15 JUDGE SIPPEL: All right. I know
16 that you've got your notice of appearance in,
17 and Mr. Marshall is on that as well as
18 yourself.

19 MR. BROWN: That's correct.

20 JUDGE SIPPEL: Okay, let me just
21 make a couple of preliminary comments here.
22 First of all, I know you're Seattle,

1 Washington. You're on the speaker phone with
2 my authorization. This is our first
3 conference. It's our first pre-hearing
4 conference and show-cause/revocation
5 proceeding. EB docket number 07-13 in Re: the
6 amateur license of David L. Titus, your
7 client, which was released by the Enforcement
8 Bureau on the 30th of January, 2007. The
9 counsel for the Bureau have now identified
10 themselves and will be participating in the
11 trial of this case.

12 Burden of proof and the burdens of
13 proceeding has been assigned to the Bureau
14 counsel. Mr. Brown, I want to again extend my
15 appreciation for your coming in this early,
16 because you're three hours behind us, so we've
17 had a chance to sort of wake up and have our
18 first cup of coffee. I hope you're not
19 disadvantaged by this. I appreciate it very
20 much, sir.

21 MR. BROWN: Well thank you for
22 allowing me to participate by phone. I

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1 appreciate it.

2 JUDGE SIPPEL: All right, well
3 let's move on to business. My first concern
4 is with the trial date. And I've informally
5 asked the parties to see if you can get
6 together with some dates. You understand that
7 I'm not going to be available in August, so
8 with that as a given, whatever all you can
9 agree to, I'm interested in hearing. Mr.
10 Schonman, you want to pick up on that?

11 MR. SCHONMAN: Sure. We have
12 informally discussed a potential hearing date,
13 and Mr. Brown, I think if my records are
14 correct, we were going to propose to the
15 presiding judge September 19th and, if
16 necessary, September 20th. That's a Wednesday
17 and a Thursday. Is that correct? Is that
18 your understanding?

19 MR. BROWN: That is where we were
20 on dates, yes.

21 JUDGE SIPPEL: Is that okay with
22 you?

1 MR. BROWN: The dates are. I do
2 have a question I'd like to ask with regard to
3 that, but the dates themselves are fine.

4 JUDGE SIPPEL: How about Mr. Titus,
5 is he essentially available on those dates?

6 MR. BROWN: Well, he will try to
7 make himself available on those dates. The
8 question we obviously had is whether there are
9 any provisions for such a hearing to be held
10 on the west coast rather than on the east
11 coast.

12 JUDGE SIPPEL: Sorry about that, no
13 sir. The designation order, which controls my
14 discretion on a question such as that order
15 the case to be heard here in Washington.

16 MR. BROWN: Right. And obviously
17 there are provisions for witnesses' testimony,
18 etcetera, upon motion, to be able to be done
19 telephonically.

20 JUDGE SIPPEL: That's correct. I
21 will listen to that request, but it's going to
22 have to be done witness by witness, and the

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1 Bureau is going to have to, obviously, have
2 the opportunity to object or ask for some kind
3 of a protective order or whatever, but I'm not
4 totally averse to it. But if the witnesses
5 needed - if the witness that is needed is a
6 fact witness -

7 MR. BROWN: Is Mr. Titus himself.

8 JUDGE SIPPEL: Mr. Titus himself?

9 MR. BROWN: Go ahead, I'm sorry. I
10 interrupted. Continue.

11 JUDGE SIPPEL: I'm saying that if
12 the witness is a fact witness, all right, to
13 what would be an essential matter of fact, and
14 it's based on something like observation as
15 opposed to introducing a document which
16 reflects a date, I might be inclined to
17 require that, for demeanor purposes, I might
18 require the witness to be heard in the
19 courtroom. But the nature of this case, it
20 seems to me, at this juncture anyway, lends
21 itself to being open to requests for
22 telephonic testimony. Now that would be with

1 the exception of Mr. Titus, of course. I
2 would expect him to be in the courtroom for
3 the entire proceeding. Now let me ask this to
4 the Bureau, do you have any objection to what
5 I just said, or any qualifications?

6 MR. SCHONMAN: No sir, we would
7 expect Mr. Titus to be present at the hearing
8 in Washington, and that if there's a request
9 that other witnesses appear by speaker phone,
10 we would want to have justification for that
11 and be able to weigh in on whether that's
12 warranted or not, or appropriate.

13 JUDGE SIPPEL: Certainly. Okay,
14 Mr. Brown, anything - now that's my ruling,
15 but do you have comment, or are there any
16 qualifications to that that you'd be asking
17 for?

18 MR. BROWN: Well, I think, just so
19 you understand the nature of the case from our
20 perspective, we are in the interesting
21 position of going to have to be proving a
22 negative. This is a gentleman who's aged

1 thirty two who was convicted, plead guilty
2 when he was eighteen to child abuse, has had
3 a clean record since then, so one of the
4 things that we will have a hard time figuring
5 out is how much we have to prove that he does
6 not have a record.

7 JUDGE SIPPEL: All right, well,
8 we'll get to that. I know that's what defense
9 counsel are for, and you know, I certainly
10 have a keen interest in what you're saying
11 here. So I think let's take it just one step
12 at a time, okay?

13 MR. BROWN: That's fine.

14 JUDGE SIPPEL: Today all we're
15 trying to do is get dates set, and I'm giving
16 you the general parameters of telephonic
17 testimony. There are some cases where I would
18 just exclude it, but I'm not excluding it.
19 I'm saying that you have the burden of showing
20 or giving a reason as to why the witness is
21 not needed here in the courtroom, and the
22 Bureau can give its position on that and I

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1 would be inclined to accept it unless it was
2 a good reason not. Again, with the exception
3 of Mr. Titus.

4 MR. BROWN: Yes.

5 JUDGE SIPPEL: Okay. Now, the
6 scope of discovery. I know what's in the mill
7 right now. Let me just make an aside with
8 respect to filing pleadings with the
9 Commission. You filed an original and one of
10 the set of pleadings that you filed -
11 basically preliminary objections, I think, to
12 the request for documents -

13 MR. BROWN: Correct.

14 JUDGE SIPPEL: -- And
15 interrogatories of the Bureau and asking for
16 a bit of an extension of time, that type of
17 thing. Those documents came in **as** an original
18 and one. The rules require an original and
19 six copies. And they are to be filed not with
20 the Office of the Administrative Law Judge,
21 but with the Office of the Secretary. So
22 we're going to require that you file five

1 additional copies with the secretary's office.
2 We'll take care of the original and one. And
3 I've got - you've given me the notice that I
4 want. You've given me a fax notice of these
5 documents, and that's all I need for my
6 working copies.

7 MR. BROWN: Got it.

8 JUDGE SIPPEL: But the official
9 filing, and that can get critical sometimes,
10 when it comes a date, compliance with the
11 rules on dates, like any other court system.
12 And those have to be filed specifically with
13 the secretary's office, and we then - the **six**
14 copies get distributed to counsel and the
15 judges, and we get the stamped copy from the
16 secretary's office, so we know we've a fixed
17 date that we can work with if we need to.

18 But on the other hand, in the
19 meantime, yes, fax us, right away, as soon as
20 you're finished sending them out for filing,
21 give me a fax and also an email copy to myself
22 and to Mrs. Gosse, my assistant.

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1 MR. BROWN: Yes.

2 JUDGE SIPPEL: And I guess whatever
3 you worked out with counsel. Courtesy copies
4 to counsel also. And he'll do the same for
5 you. Mr. Schonman?

6 MR. SCHONMAN: Yes, I have some
7 additional matters with respect to filings.
8 I think it would be helpful if each individual
9 filing has a certificate of service appended
10 to it, and then I think - I'm certain that the
11 rules require that each pleading be directed
12 to a particular individual or entity that's
13 supposed to rule on it. So it has to have
14 your name on the - your Honor, if you're the
15 one to whom it's directed, your name has to
16 appear on the - below the caption. And I also
17 believe that in terms of filing the original
18 plus six, so that we all are aware of due
19 dates for certain filings, that the document
20 has to be received at the secretary's office
21 on or before the due date, not necessarily
22 mailed from Seattle on the due date.

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1 JUDGE SIPPEL: Mr. Schonman is - I
2 know from experience he's citing basically
3 what the rules require. Do you have any
4 additional comment to that, Mr. Brown? It
5 seems to be pretty straightforward, and I will
6 give you time to get - to meet these dates.
7 I mean, if you need a couple of more days
8 coming in from Seattle, I'll be glad to give
9 those to you.

10 MR. BROWN: One, I understand what
11 he says. Two, I would request, particularly
12 given sometimes the state of the mail, the
13 same courtesy of being faxed or emailed copies
14 of all pleadings so that even with the lack of
15 delivery of mail, that I get them in time to
16 be able to respond.

17 JUDGE SIPPEL: Oh, absolutely. I
18 don't mean to cut you off, but absolutely. I
19 mean, this is a two-way street on all this.
20 And I will courtesy-copy you as well as Bureau
21 counsel with email copies of orders. Once the
22 order leaves the office, usually on the

1 issuance date, not even on the release date,
2 I will get you a courtesy copy, so that -
3 particularly if it's a time-sensitive order.

4 MR. BROWN: Right, and I assume
5 that future pleadings will be, in fact, mailed
6 to our law offices as opposed to our client.

7 JUDGE SIPPEL: Mr. Schonman?

8 MR. SCHONMAN: Well, absolutely.
9 Now that you have filed a notice of
10 appearance, we now know that you exist. When
11 we filed our original documentary quest and
12 interrogatories, we had not yet received your
13 late-filed notice of appearance.

14 JUDGE SIPPEL: All right. You want
15 to respond to that, Mr. Brown? I didn't mean
16 to cut you off.

17 MR. BROWN: No, I just - in the
18 spirit with which we're conducting this
19 conference, I just want to make sure that
20 we're all square on moving forward.

21 JUDGE SIPPEL: Absolutely. Good
22 point. All right, well I think we basically

1 know where we're going on this. I require a
2 fax because sometimes I don't check my emails
3 as religiously as I probably should, and I
4 know if a fax comes in, I know I've got it.

5 MR. BROWN: That's not a problem.

6 JUDGE SIPPEL: But you all can
7 agree to just using emails, whatever you all
8 agree to is fine with me. When I say you all,
9 I mean you and the Bureau counsel.

10 MR. BROWN: Understood.

11 MR. SCHONMAN: Your Honor, the
12 Bureau has no problem sending Mr. Brown
13 courtesy copies either by fax or by email so
14 that he gets it virtually immediately. My
15 concern was with Mr. Brown's filing of
16 documents with the secretary's office, that he
17 has to somehow arrange to insure that
18 documents are received by the secretary's
19 office. An original and the proper number of
20 copies on whatever due date is applicable to
21 that pleading.

22 JUDGE SIPPEL: All right. I think

1 we've already covered that. He knows that.
2 And you've got the Bureau's pleading. **You** can
3 see what Mr. Schonman was referring to in
4 terms of addressing a pleading specifically to
5 myself.

6 MR. BROWN: Let's take a **look** -
7 he's talking about his discovery pleadings?

8 JUDGE SIPPEL: Right.

9 MR. BROWN: Yes, I have those.

10 JUDGE SIPPEL: Well, no, he's got
11 them addressed to Mr. Titus. He doesn't have
12 them addressed to me.

13 MR. BROWN: That's right.

14 JUDGE SIPPEL: Not that they should
15 be necessarily addressed to me, but I'm just
16 trying to say that there is a - you know, in
17 the place where instead of "To David L.
18 Titus," it would say "To the Honorable Richard
19 L. Sippel, Chief Administrative Law Judge,"
20 something like that.

21 MR. BROWN: Yes, that's fine.

22 JUDGE SIPPEL: And that would cover

1 your point, right Mr. Schonman?

2 MR. SCHONMAN: Yes sir.

3 JUDGE SIPPEL: This is such a
4 common thing that I don't really focus on it
5 in a pre-hearing conference. And I don't mean
6 to say that it's not important. It is. Let's
7 do this one right, and I'm sure we will.

8 MR. SCHONMAN: And your Honor,
9 yesterday we did file a pleading directed to
10 you, and we will, today, send Mr. Brown either
11 a fax or an email version of that.

12 JUDGE SIPPEL: Okay, I haven't
13 gotten that. Have we gotten that? Oh, Mrs.
14 Gosse just passed it over to me. What I've
15 just been handed is a copy of the Bureau's
16 response to David Titus' response and general
17 objections to the first set of interrogatories
18 and a request for additional time in which to
19 answer and object. I was going to address the
20 additional time. I haven't read this
21 document, I'm just looking at the title. But
22 it certainly will show how it's addressed to

1 me.

2 MR. BROWN: Yes, and I of course
3 haven't received it.

4 MR. SCHONMAN: On that point, your
5 Honor, we have no objection to his request for
6 additional time.

7 JUDGE SIPPEL: okay, there is no
8 objection to the time. I can move right into
9 that right now, then. And that is, let me
10 see, I've got a note on that. You want until
11 the second of April?

12 MR. BROWN: That would be good. I
13 guess with the mailing time we maybe ought to
14 be smart with that, because that will be three
15 days. It's probably smarter, if no party
16 objects, to - it would be wiser to make it the
17 sixth of April, but I can live with the second
18 of April, getting it there. Given that we
19 have a September hearing date, I would not
20 think we're particularly time-sensitive, but
21 maybe I'm wrong.

22 JUDGE SIPPEL: Well, the sixth is

1 okay with me. I'm going to be out of the
2 country until the sixteenth, so if it's all
3 right with the Bureau, the sixth is fine with
4 me, and then the Bureau would have until the
5 sixteenth. How does that work?

6 MR. SCHONMAN: Well, I guess I'm
7 confused. In his request for additional time
8 to respond to the interrogatories, he asked
9 for April 2nd.

10 JUDGE SIPPEL: Right.

11 MR. SCHONMAN: Is he now not asking
12 for April 2nd? He wants April 6th?

13 JUDGE SIPPEL: That's correct.
14 Because of the mailing requirement. He knows
15 that he has to get it in - it has to be
16 received at the Commission on the date that
17 it's due.

18 MR. SCHONMAN: He can email that to
19 us, to the Bureau, that is.

20 JUDGE SIPPEL: Yes, but he's got to
21 get it in to the Commission. He's got to get
22 it in to the secretary's office on the due

1 date, also.

2 MR. SCHONMAN: If he wants to
3 modify to April 6th, we would have no
4 objection to that. But I think in the future
5 it would be helpful if, when he requests a
6 date, that that is the date that he's
7 requesting.

8 JUDGE SIPPEL: I don't mean to
9 speak on your behalf, Mr. Brown, but **my**
10 understanding is is that we're now - we're
11 just getting into the nuts and bolts of this
12 filing requirement, and he's going to be
13 filing documents from out there in Seattle,
14 Washington, to the Commission here on 12th
15 Street, and we've noted to him, or instructed
16 him, that the date that is set for the filing,
17 whether it's by virtue of rule or by virtue of
18 my order, is the date that it has to be
19 physically filed with the Commission.

20 And the date that he sends it to
21 the Commission, however he does it, whether
22 it's by - you know, two or three days earlier,

1 by overnight mail or messenger, however, we
2 will get the courtesy copies. So they should
3 be emailed the date that they leave your - the
4 day that they're signed and they leave your
5 office - I'm talking to both counsel on this,
6 the emails should go out. Unless it's done
7 late in the evening and you want to wait until
8 the next day. Again, there's a rule of reason
9 here. I'm not asking or setting a requirement
10 here that you wait until a document is
11 actually filed with the Commission before you
12 send the courtesy out. The whole idea is to
13 get that courtesy out right away.

14 MR. SCHONMAN: The Bureau
15 understands that Mr. Brown is in Seattle. We
16 just want to make sure that when he proposes
17 a particular date and we agree to that
18 particular date, that he understands that he
19 has to take efforts to insure that it's
20 received on that date. If he proposed April
21 2nd and he understands that he has to get it
22 out sometime in late March, that's something

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1 he'll have to work with. There are firms out
2 of state that work directly with law firms
3 here in Washington, and they do the filings on
4 behalf of out of state firms.

5 I don't know if Mr. Brown has any
6 relationship with communications firms here in
7 town, but what I'm trying to do, and we
8 certainly want to cooperate, but I think we
9 have to have a precise understanding that when
10 there's a due date, that he will have to take
11 whatever efforts are necessary on his part to
12 insure that he complies with that. Now he
13 suggested, he proposed April 2nd. We filed a
14 pleading agreeing to that, and then on the
15 date of the pre-hearing conference, he's
16 proposing yet another date. This is an
17 initial pre-hearing conference. We don't
18 mind, in the spirit of cooperation, agreeing
19 to a few extra days, but I think on a going
20 forward basis, he's going to have to take
21 whatever efforts are necessary to insure that
22 it's filed on a particular date.